

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 24 of 1989

in

SPECIAL CIVIL APPLICATION No 1962 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

H P PUROHIT

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR Darshan Parikh for Mr. Mihir J Thakore
Sr.Advocate for the Appellant
MR JD AJMERA for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE D.A.MEHTA

Date of decision: 19/09/2000

ORAL JUDGEMENT(Per:Abichandani.J)

#. The appellant has challenged the order of the learned Single Judge made on 29.3.1988 rejecting the petition which was filed by him against the order of his compulsory retirement from service.

#. The learned Single Judge after going through the record found that adequate opportunity was given to the petitioner and the necessary documents were supplied to him during the inquiry. There were as many as 26 charges which were levelled against the appellant in the departmental proceedings and by order dated 30.5.1985 agreeing with the findings of the Inquiry Officer, the Disciplinary Authority imposed multiple punishments such as compulsory retirement separately for 5 charges, reduction by two stages in the time scale of pay for 5 charges and censure for some charges. On going through the Inquiry Officer's report, we notice that most of the charges related to excess of authority in disbursing financial assistance to the customers and of not sending the periodic returns. The charges centered round lack of discretionary powers in sanctioning financial assistance to various customers, of amounts varying between Rs. 1000 and Rs.8000/-. There was no allegation of misappropriation or dishonesty.

#. The other set of charges was for having remained absent due to sickness for about 84 days. The Inquiry Officer, as regards those charges had found that the charges were proved and by an order dated 30.5.1985 even in respect of those charges, the Disciplinary Authority had imposed multiple punishments of compulsory retirement on two counts and reduction of one stage in the time scale of pay for the third. The Appellate Authority agreeing with the findings reached during the inquiry upheld the multiple punishments imposed separately on each count on the delinquent. The delinquent had raised a contention that the order of punishment was passed by an officer who was only in charge of the post of Managing Director. Before the Appellate Authority the appeal memo in ground no.9 the appellant had taken up a contention that the General Manager had called him in his chamber and threatened him orally, before the inquiry was started, that he would give chargesheet to the appellant and remove him from service and the impugned order came to be passed by the same officer who had imposed the multiple punishments separately on each count on the

delinquent. The delinquent had raised a contention that the order of punishment was passed by an officer who was only holding the charge of the post of Managing Director. There was also an allegation that there was some conflict between the appellant and his superior officers and that there was litigation between the bank and the appellant.

#. The learned counsel for the appellant strongly contended that the appellant was not given an opportunity of being heard in the matter. It was further contended that the requisite documents were not supplied. It was submitted that multiple punishments were imposed on trivial charges and that the Appellate Authority had not at all applied its mind to the question of quantum of punishment. The learned counsel counsel for the respondent on the other hand supported the decision of the learned Single Judge and the disciplinary action taken against the delinquent. He further submitted that though separate punishments of compulsory retirement were awarded for five separate charges, cumulative effect was given to these punishments and even the separate punishments of reduction of two stages and one stage in the time scale of pay imposed on the delinquent were given cumulative effect and therefore, no prejudice was caused to him.

#. It does appear that during the inquiry the appellant was given opportunity of being heard. However from the manner in which multiple penalties of compulsory retirement were awarded on several counts even for having remained absent from duty and punishments of reducing one and two stage of his time scale of pay have also been imposed on the delinquent on several minor counts, it appears to us that the Appellate Authority while disposing of the appeal and confirming the order of the Disciplinary Authority did not direct itself to the quantum of punishment or the propriety of imposing of such multiple punishments on various counts which individually taken might be minor misconduct. The Appellate Authority is the Executive Committee of the Bank and it appears to us that the Executive Committee should direct itself to the question of quantum of punishment in this case and take a fresh decision in the matter on the quantum of punishment having regard to the fact that there were no allegations of misappropriation or dishonesty and that this was a case of exceeding authority while exercising discretionary power to give financial aid to customers which was of small amounts ranging between Rs.1000/- to Rs. 8000/and that the absence from duty was due to ailment. As held by this Court in Sardarsingh Devisingh vs. The District

Superintendent of Police, Sabarkantha District & ors. reported in 26(2) GLR 1368 when an authority is conferred with the power to inflict one of the several penalties such as censure, reprimand, fine, stoppage of increments, reduction in rank, removal or dismissal, it is obvious that the authority must give a serious thought to the question of choice of penalty which cannot be arbitrary but must depend on the nature of misconduct established in a given case. Just as a road roller cannot be brought to crush a fly so also the extreme penalty of dismissal cannot be inflicted for misconduct which is not equally grave. It was observed that the consequences of removal or dismissal from service are severe. Sometimes the entire family is ruined because another job or work may not be easy to find and therefore, it is all the more necessary that the punishment of removal or dismissal should be invoked sparingly and in cases which can be described as gross, such as receiving illegal gratification, misappropriation or defalcation of public funds, behavior which is morally reprehensible, gross abuse or misuse of authority etc.

#. In the present case though punishment of dismissal was not imposed even punishment of compulsory retirement had grave consequences. The punishment of compulsory retirement was separately imposed on various counts including absence from duty due to sickness. In fact the period of absence under charge no.3 for which compulsory retirement was imposed was covered under the period of charge no 1 alleging absence from duty and even on that count punishment of compulsory retirement was separately imposed. It would therefore, be appropriate for the Appellate Authority to consider the question of penalty that can be imposed on the delinquent in the light of nature of charges which have been established against him keeping in view the ratio of the decision of this Court in Sardarsingh's case (Supra). We, accordingly direct the Appellate Authority to reconsider the matter only on the question of quantum of punishment that may be imposed on the appellant having regard to the nature of various charges which are held to have been proved against him. The decision may be taken by the Appellate Authority i.e. the Executive Committee within eight weeks from the date of receipt of the writ of this order after hearing the appellant without being coloured by the earlier order made by the Appellate Authority. This appeal is allowed to this limited extent with no order as to costs.

(R.K.Abichandani.J)

(D.A.Mehta.J)

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